

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed amendment ) NOTICE OF PUBLIC HEARING  
of ARM 24.29.1416, and the proposed ) ON PROPOSED AMENDMENT  
adoption of NEW RULE I both related to ) AND ADOPTION  
allowable charges for prescription drugs )  
under a workers' compensation claim )

TO: All Concerned Persons

1. On June 29, 2007, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (Room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on June 22, 2007, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Keith Messmer, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail [kmessmer@mt.gov](mailto:kmessmer@mt.gov).

3. The rule proposed to be amended provides as follows, stricken material interlined, new material underlined:

24.29.1416 APPLICABILITY OF DATE OF INJURY, DATE OF SERVICE

(1) The amounts of the following types of payments are determined according to the specific department rates in effect on the date the medical service is provided, regardless of the date of injury:

- (a) medical fees; and
- (b) hospital charges.

~~(2) The reimbursement rate for prescription drugs is based upon the rate in effect on the date the drug is dispensed. The rate for a specific generic-name drug is the average wholesale price of that drug plus a reasonable dispensing fee established by the insurer. If the generic drug is unavailable and the pharmacist so certifies under 39-71-727, MCA, the reimbursement rate is the average wholesale price of the brand-name drug plus the dispensing fee.~~

~~(3) Department rates (fee schedules) do not apply to preferred providers or managed care organizations to the extent that they are rendering services or providing goods to workers who are covered by insurers with which they have a contract.~~

~~(4) Pursuant to statute, a pharmacist may not dispense more than a 30 days supply at any one time.~~

AUTH: 39-71-203, MCA  
IMP: 39-71-704, ~~39-71-727~~, MCA

REASON: Chap. 117, L. 2007 (Senate Bill 108) requires the department to establish a schedule of fees for prescription drugs. NEW RULE I represents how the department proposes to satisfy that requirement. There is a reasonable necessity to amend this rule in order to place all requirements for payment of prescription drugs into one location under NEW RULE I for convenience of affected parties in referencing only a single rule. Sections (3) and (4) are proposed to be deleted as the substance of both appears to be adequately explained in 39-71-727, MCA.

4. The proposed new rule provides as follows:

NEW RULE I PRESCRIPTION DRUGS FEE SCHEDULE (1) In addition to the limitations on the payments for and dispensing of prescription drugs as set out by 39-71-727, MCA, the following apply:

- (a) The reimbursement rate for prescription drugs is based upon the rate in effect on the date the drug is dispensed.
  - (b) Reimbursement rates to retail pharmacies for brand-name drugs are limited to the average wholesale price (AWP), minus 15 percent, of the product at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per product.
  - (c) Reimbursement rates to retail pharmacies for generic-name drugs are limited to the AWP, minus 25 percent, of the product at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per product.
  - (d) For the purposes of this rule, average wholesale prices must be updated weekly.
- (2) If, prior to liability for a claim being accepted by the insurer, an injured worker has personally paid for prescription drugs, prescribed for a condition for which liability is subsequently accepted, the injured worker is entitled to a refund of the price paid by the injured worker for the prescription drug.
- (a) The insurer, when accepting liability for a condition for which a prescription drug has been prescribed, must reimburse the injured worker the retail price paid.

AUTH: 39-71-203, MCA  
IMP: 39-71-727, 39-71-743, MCA

REASON: There is reasonable necessity to adopt proposed NEW RULE I to implement the statutory changes enacted by Chap. 117, L. 2007 (SB 108) requiring the department to annually adopt a schedule of fees for prescription drugs. The department selected reimbursement rates for brand-name and generic-name drugs, as well as the dispensing fee, at a level that represents a mid-range of rates paid by other insurers in the Montana marketplace.

The department notes that NEW RULE I was developed after discussion with representatives of the Montana Pharmacy Association, private sector insurers, and

the Montana State Fund. The department also notes that the average wholesale price (AWP), referred to in NEW RULE I, is greater than the net cost actually paid by a pharmacy that dispenses the prescription drug, and thus the proposed rule does not require that pharmacies operate at a loss or subsidize the cost of workers' compensation prescriptions.

Although proposed NEW RULE I establishes a rate schedule for prescription drug reimbursement for workers' compensation claims, it does not establish specific, fixed monetary amounts payable for particular drugs. The dispensing fee is being reduced from the former statutory maximum of \$5.50 to \$3.00 per product. However, many workers' compensation insurers have developed preferred provider organizations for pharmacies, and have been paying a dispensing fee of less than the maximum fee allowed under the former statute to pharmacies that are members of those preferred provider organizations. Likewise, the reimbursement rate in a preferred provider organization for the cost of prescription drugs is typically lower than the average wholesale price. The department estimates the aggregate amount of the fiscal impact upon workers' compensation insurers (the payors) and upon pharmacies (the payees) as being as much as \$1.1 million. The department estimates that of that potential \$1.1 million, not more than approximately \$100,000 is attributable to the change in the dispensing fee. There are approximately 471 workers' compensation insurers currently authorized to write coverage in Montana who may be affected by the proposed rule. There are approximately 325 licensed pharmacies in Montana who may be affected by the proposed rule.

Finally, there is reasonable necessity to clarify the procedure for providing a refund to the injured worker for prescriptions paid for prior to the insurer's acceptance of liability on a claim. The department has received a number of inquiries over the years on this subject, and believes that including the information as part of the rule will make it easier for pharmacies and injured workers to make sure that the costs of work-related injuries are appropriately borne by the workers' compensation system.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Keith Messmer, Bureau Chief, Workers' Compensation Regulations Bureau, Employment Relations Division Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; by facsimile to (406) 444-3465; or by e-mail to [kmessmer@mt.gov](mailto:kmessmer@mt.gov), and must be received no later than 5:00 p.m., July 6, 2007.

6. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may

be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to [mcadwallader@mt.gov](mailto:mcadwallader@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 108 was notified on May 17, 2007, by regular mail.

9. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 29, 2007